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MEMO ENDORSED

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August 27, 2021

VIA ECF

Hon. Edgardo Ramos
United States District Judge
Southern District of New York
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

The requests are granted. The Clerk of Court is respectfully directed to terminate the motion. Doc. 352.

So ordered.



Edgardo Ramos, U.S.D.J.

Dated: 8/27/2021

New York, New York

Re: Anthem, Inc. v. Express Scripts, Inc., 16-cv-2048-ER

Dear Judge Ramos:

Pursuant to Rule 5.2 of the Federal Rules of Civil Procedure, Rule 3(ii) of Your Honor's Individual Practices, and Paragraph 32 of the Amended Confidentiality Agreement and Stipulated Protective Order, Dkt No. 244 (the "**Protective Order**"), Express Scripts, Inc. ("**Express Scripts**") respectfully submits this letter-motion seeking an Order sealing (1) its Memorandum in Support of its Motion for Partial Summary Judgment ("**Summary Judgment Brief**"), (2) its Statement of Undisputed Material Facts, and (3) Exhibits 1–6, 23–83, 85–111, 113–167, 169–198, 200–241 to the Declaration of Ellison Ward Merkel in support of its Motion for Partial Summary Judgment.

Paragraph 32 of the Protective Order requires that, when filing materials designated as "Confidential" or "Highly Confidential" under the Protective Order, or when filing portions of motions that disclose such designated materials, the parties "shall seek the Court's permission to make such filing under seal, consistent with applicable Court rules and procedures, and publicly file a redacted copy of the Confidential Court Submission via the Electronic Case Filing System." Express Scripts' Summary Judgment Brief and its Statement of Undisputed Material Facts quote and cite documents that have been designated as "Confidential" or "Highly Confidential" under the Protective Order by Express Scripts, Anthem, Inc. ("**Anthem**"), or third parties. Express Scripts has prepared redacted versions of its Summary Judgment Brief and its Statement of Undisputed Material Facts, with redactions limited to the information designated as "Confidential" or "Highly Confidential" that is quoted or described therein. Additionally, Exhibits 1–6, 23–83,

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85–111, 113–167, 169–198, 200–241 have been designated “Confidential” or “Highly Confidential” by Express Scripts, Anthem, or third parties.

In compliance with Paragraph 32 of the Protective Order, Express Scripts seeks the Court’s permission to file its Summary Judgment Brief, Statement of Undisputed Material Facts, and Exhibits 1–6, 23–83, 85–111, 113–167, 169–198, 200–241 under seal, while publicly filing the redacted versions of its Summary Judgment Brief and Statement of Undisputed Material Facts. Anthem does not object to this letter motion.

In an effort to minimize the redactions, and in accordance with Paragraph 28 of the Protective Order, Express Scripts notified Anthem and various third parties on August 20, 2021, of its objections to confidentiality designations of documents referenced within Express Scripts’ Summary Judgment Brief. On August 25, Anthem responded that, with the exception of one document and certain provisions of the PBM Agreement whose substance has already been publicly disclosed, it would not revise its confidentiality designations and would not permit those documents to be publicly disclosed. If the parties cannot resolve the challenged designations, then Express Scripts intends to apply for relief from the Court, so that Express Scripts may publicly file a version of its Summary Judgment Brief that contains fewer redactions or no redactions at all.

To comply with the Protective Order, Express Scripts respectfully requests that this letter motion be granted in its entirety and an Order be issued sealing (1) Express Scripts’ Summary Judgment Brief, (2) its Statement of Undisputed Material Facts, and (3) Exhibits 1–6, 23–83, 85–111, 113–167, 169–198, 200–241 to the Declaration of Ellison Ward Merkel in support of its Motion for Partial Summary Judgment. Express Scripts reserves all rights to seek to publicly file a version of its Summary Judgment Brief that contains fewer redactions or no redactions at all.

Respectfully submitted,

/s/ Michael J. Lyle

Michael J. Lyle

cc: All counsel of record (via ECF)